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In the Matter of:

Policies and Rules for the
Direct Broadcast Satellite Service

IB Docket No. 98-21

REPLY COMMENTS OF TEMPO SATELLITE, INC.

TEMPO Satellite, Inc. ("TEMPO"), by its attorneys, hereby submits its reply to the comments in the above captioned proceeding, which overwhelmingly support the Commission's proposal overall to streamline the Commission's regulation of the direct broadcast satellite ("DBS") service.¹

Technical and Service Rules. The record reveals strong support for the goal to "simplify the Commission's rules governing" DBS by eliminating "unnecessary and duplicative regulation."² The commenters agree that maintaining the historic flexible approach to DBS would foster a vibrant and innovative DBS service that could respond to dynamic customer demands without burdensome and unnecessary regulatory obligations.³ As News

¹ Policies and Rules for the Direct Broadcast Satellite Service, IB Docket No. 98-21, *Notice of Proposed Rulemaking*, FCC 98-26 (rel. Feb. 26, 1998) ("Notice").

² *Id.* at ¶ 1.

³ See Comments of EchoStar Communications Corp. at 13 ("EchoStar"); Comments of Loral Space & Communications at 1; Comments of The News Corporation Ltd. at 2 ("News

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Corporation explains, minimal regulation “befits a nascent, rapidly evolving, technologically advanced service.”⁴

To preserve the uniqueness of DBS, however, the Commission “must protect those aspects of DBS which distinguish it from other satellite services.”⁵ To this end, any technical requirements should promote “the full protection from interference for DBS service,” particularly its use of existing small receive antennas.⁶ This is particularly true with respect to the potential threat to DBS posed by non-geostationary services, such as the proposed SkyBridge system.⁷ Thus, the Commission should reject SkyBridge’s attempt to freeze technically the development of rapidly-evolving DBS for the benefit of a hypothetical service.

In contrast to the goal of streamlining, certain parties propose new burdensome regulations regarding the provision of service to Alaska and Hawaii, including mandatory dish-size requirements, program service and rate obligations, and even mandatory “cooperative agreements” between co-located operators.⁸ The FCC should reject these calls

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Corp.”); Comments of PanAmSat Corp. at 2, Comments of PRIMESTAR, Inc. at 5 (“PRIMESTAR”); Comments of United States Satellite Broadcasting Company, Inc. at 2 (“USSB”).

⁴ News Corp. at 2.

⁵ USSB at 2.

⁶ *Id.*; *see also* EchoStar at 12-13; PRIMESTAR at 12-13.

⁷ *See, generally*, Comments of SkyBridge, L.L.C. (April 6, 1998).

⁸ *See* Comments of State of Hawaii at 3 (listing five additional service requirements); Comments of State of Alaska at 2 (supporting Hawaii’s proposals); Comments of Microcom at 3-5.

for increased regulation, and instead maintain the careful balance struck in 1995 between operator requirements and service needs. In this way, the Commission can best continue “to afford permittees the maximum flexibility in designing and implementing their services, both to take advantage of changes in technology and to present the most efficient or effective service from a business perspective.”⁹

As noted in its original comments, TEMPO designed a satellite to provide service to Alaska and Hawaii without the necessity of government coercion, based on a technical and business model that it believes will maximize competitiveness. In light of long-standing investment expectations and the Commission's recognition that intra-DBS competition is a significant goal of its DBS policies,¹⁰ the FCC should not restrict the ability of licensees to maximize their use of DBS facilities. Moreover, certain technical restraints, such as international interference criteria, may legitimately affect the degree and nature of service that may be provided to non-CONUS areas. Adoption of additional geographic service requirements in fact could actually preclude the expansion of services to Alaska and Hawaii.¹¹ Quite simply, marketplace dynamics provide the best incentive for the delivery of new competitively-priced program services.

DBS Cross-Ownership. The vast majority of commenters support retention of the existing case-by-base approach to considering cross-ownership issues. Even parties that attempt

⁹ *Continental Satellite Corp.*, 4 FCC Rcd 6292, 6293 (1989).

¹⁰ See *DBS Auction Order* at 9738 (“[O]ur goal is to foster rivalry among MVPDs by promoting rivalry within the DBS service.”).

¹¹ See *EchoStar* at 10.

merely to reargue their concerns regarding the applications of PRIMESTAR, Inc. to acquire DBS interests, including control of TEMPO, acknowledge that a *per se* rule is not warranted.¹² Rather, as Ameritech notes, a “one-size-fits-all” approach could stifle the development of rapidly-evolving DBS and “unnecessarily prohibit or restrict transactions that could promote competition and consumer choice in MVPD markets.”¹³

PRIMESTAR has demonstrated that opposition to its proposals is misguided and inappropriate in the context of a rule making.¹⁴ The PRIMESTAR applications should be considered on their individual merits, and not delayed because of the Commission’s request for general comments in this proceeding. The Commission should therefore maintain its existing approach of evaluating cross-ownership issues on a case-by-case basis.¹⁵

¹² See, e.g., Comments of BellSouth Corp. at 3; Comments of DIRECTV, Inc. at 11; Comments of United Church of Christ & Consumers Union at 3.

¹³ Comments of Ameritech at 2-3; see also PRIMESTAR at 12-13; Comments of Time/Warner at 9-10.

¹⁴ PRIMESTAR at 6-17.

¹⁵ DIRECTV asserts that transponder capacity leases could potentially be used to avoid Commission scrutiny of transactions that may otherwise constitute transfer events. DIRECTV at 13-15. DIRECTV then erroneously suggests that certain arrangements between TEMPO and PRIMESTAR were “designed to achieve the same economics and result as an outright transfer” of TEMPO’s authorization and may constitute a *de facto* transfer of control. *Id.* at 14. n.32. DIRECTV’s incorrect conclusion of law is premised upon a false understanding of TEMPO’s transaction. As fully described in the proxy statement cited (but not fully understood) by DIRECTV, a transaction by which PRIMESTAR proposed to reorganize into the corporate form and acquire control of TEMPO was originally designed to be accomplished in one step. This transaction was restructured into a multi-step process so that the reorganization of PRIMESTAR could occur without transferring control of TEMPO. The proxy statement merely stated that the revised reorganization, *as a whole*, including transfer of TEMPO’s authorization upon FCC consent, would have the same economic benefits for investors as the originally-proposed one-step restructuring. See Amendment to Registration

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TEMPO urges the Commission to maintain its flexible approach to the regulation of DBS by rejecting calls to impose regulatory obligations on providers or to adopt structural ownership restrictions. The record in this proceeding, as supported by the real-world experience of existing DBS systems, demonstrates that reducing administrative burdens facilitates the delivery of service.

Respectfully Submitted,

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Statement (Form S-4) of PRIMESTAR, Inc. February 9, 1998, at 56. Moreover, DIRECTV's theoretical objections to transponder transactions are contrary to the Commission's long-standing policies regarding the deregulation of capacity leases and transponder sales. *See Domestic Fixed-Satellite Transponder Sales*, 90 F.C.C. 2d 1238, 1251 (1982), *aff'd sub nom.*, *Wold Communications, Inc. v. FCC*, 735 F.2d 1465 (D.C. Cir. 1984).